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In re Application of :
MARI, Giorgio, et al. :
U.S. Application No.: 10/525,044 : **DECISION ON PETITION**
PCT No.: PCT/EP03/09174 : **UNDER 37 CFR 1.47(a)**
International Filing Date: 19 August 2003 :
Priority Date: 21 August 2002 :
Attorney's Docket No.: P70417US0 :
For: FILTER FOR THE DEPLETION OF :
LEUKOCYTES FROM BLOOD PRODUCTS :

This decision is issued in response to applicants' 01 August 2005 petition under 37 CFR 1.47(a). Applicants submitted \$130 as the petition fee; the correct petition fee is \$200. Deposit Account No. 06-1358 will be charged the remaining \$70.

BACKGROUND

On 19 August 2003, applicants filed international application PCT/EP03/09174 which claimed a priority date of 21 August 2002 and which designated the United States. On 04 March 2004, a copy of the international application was communicated to the United States Patent And Trademark Office (USPTO) by the International Bureau (IB). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 21 February 2005.

On 18 February 2005, applicants filed a transmittal letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee.

On 07 July 2005, the United States Designated/Elected Office (DO/EO/US) mailed a "Notification Of Missing Requirements" (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required.

On 01 August 2005, applicants filed a response to the Notification Of Missing Requirements that included a declaration executed by two of the three inventors, and the petition under 37 CFR 1.47(a) considered herein. The petition requests acceptance of the declaration without the signature of the remaining inventor, Alessandra ORI, whom applicants assert has refused to execute the present application.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration by the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

The petition here was accompanied by partial payment of the petition fee, and the authorization to charge Deposit Account No. 06-1358 for additional fees, and it includes a statement of the nonsigning inventor's last known address. Items (1) and (2) are therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Procedure ("MPEP") states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the available joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed a declaration executed by two of the three inventors and including an unsigned signature box identifying the nonsigning inventor (Alessandra ORI). This declaration is treated as having been executed by the available inventors on their behalf and on behalf of the nonsigning inventor. Item (3) is therefore satisfied.

Regarding item (4), applicants assert that the nonsigning inventor has refused to execute the application. However, before a refusal to execute the application can be claimed, MPEP § 409.03(d) requires that the nonsigning inventor be provided with a copy of the complete application, including specification, drawings, and claims. The MPEP also requires "a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made." Applicants here have supplied a statement from Joseph G. CONTRERA, with accompanying exhibits, as evidence that the inventor has refused to sign the application. However, this statement and the attached correspondence refer only to a copy of the Declaration and Assignment forms being sent to the inventor; there is no evidence that the nonsigning inventor has been provided with a copy of the complete application, as required by the MPEP. In addition, Mr. CONTRERA is not the person who sent the attached correspondence to the nonsigning inventor and to whom the inventor's response was sent. Accordingly, applicant has not provided the required "statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made."

Based on the above, item (4) is not satisfied on the present record.

CONCLUSION

The petition under 37 CFR 1.47(a) is **DISMISSED WITHOUT PREJUDICE**.

If reconsideration on the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and must be accompanied by the materials needed to satisfy the outstanding requirement for a grantable petition, that is, firsthand evidence that the nonsigning inventor has been provided with a copy of the complete application and has refused to sign the required documents. Such evidence must be provided in compliance with MPEP § 409.03(d).

No additional petition fee is required.

Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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